



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 21, 2011

Memorandum for: Deputy Commissioner, Trials

Re: **Detective George Weir**
Tax Registry No. 944206
44th Precinct
Disciplinary Case No. 85932/09

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on January 6, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 85932/09

1. Said Detective George Weir, assigned to the 44 Precinct, while on duty, at or about 0900 hours, on June 18, 2008, in the vicinity of East 169th Street and Grant Avenue, Bronx County, did abuse his authority as a member of the New York City Police Department in that he stopped Guillermo Maldonado, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1

STOP AND FRISK

2. Said Detective George Weir, assigned to the 44 Precinct, while on-duty, at or about 0900 hours, on June 18, 2008, within the confines of the 44 Precinct Stationhouse, Bronx County, did abuse his authority as a member of the New York City Police Department in that he issued a summons to Guillermo Maldonado, without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

ABUSE OF AUTHORITY

In a Memorandum dated April 21, 2011, Assistant Deputy Commissioner Vinal found Respondent Weir Guilty of both Specifications. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the recommended penalty of 20 Vacation days.

With consideration of the tasks and duties Respondent Weir was carrying out on the incident date, coupled with a positive evaluation of his overall performance, as offered by his Commanding Officer, the disciplinary penalty for this instant matter shall consist of the forfeiture of ten (10) Vacation days.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

April 21, 2011

MEMORANDUM FOR: Police Commissioner

RE: Detective George Weir
Tax Registry Number 944206
44 Precinct
Disciplinary Case No. 85932/09

Police Officer Jeannette Rivera
Tax Registry Number 933259
Police Service Area 6
Disciplinary Case No. 85933/09

The above-named members of the Department appeared before me on
January 6, 2011, charged with the following:

Disciplinary Case No. 85932/09

1. Said Detective George Weir, assigned to the 44 Precinct, while on-duty, at or about 0900 hours, on June 18, 2008, in the vicinity of East 169th Street and Grant Avenue, Bronx County, did abuse his authority as a member of the New York City Police Department in that he stopped Guillermo Maldonado, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Detective George Weir, assigned to the 44 Precinct, while on-duty, at or about 0900 hours, on June 18, 2008, within the confines of the 44 Precinct Stationhouse, Bronx County, did abuse his authority as a member of the New York City Police Department in that he issued a summons to Guillermo Maldonado, without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

Disciplinary Case No. 85933/09

1. Said Police Officer Jeannette Rivera, assigned to the 44 Precinct, while on-duty, at or about 0900 hours, on June 18, 2008, in the vicinity of East 169th Street and

COURTESY • PROFESSIONALISM • RESPECT

Grant Avenue, Bronx County, did abuse her authority as a member of the New York City Police Department in that she stopped Guillermo Maldonado, without sufficient legal authority

P G 212-11, Page 1, Paragraph 1 – STOP AND FRISK

The Department was represented by Mary Lynne Frey, Esq , Department Advocate's Office, and Laura Edidin from the Civilian Complaint Review Board
Respondent Weir was represented by James Moschella, Esq , and Respondent Rivera was represented by Craig Hayes, Esq

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police

DECISION

Disciplinary Case No 85932/09

Respondent Weir is found Guilty

Case No 85933/09

Respondent Rivera is found Guilty

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that on June 18, 2008, the Respondents, assigned to the 44 Precinct, performed 0700 hours to 1535 hours tours of duty assigned to Street Narcotics Enforcement Unit (SNEU) duties in plain clothes At about 0900 hours, they were seated

inside their unmarked Department vehicle conducting surveillance of the front entrance of [REDACTED], the Bronx, a residential apartment building which is a SNEU target location because it is located in a drug-prone area. The owner of [REDACTED] had enrolled his building in [REDACTED] s Trespass Affidavit Program (TAP).

It is further undisputed that after Guillermo Maldonado came out of [REDACTED] at about 0900 hours and began walking away from the building, the Respondents followed him in their vehicle.

The Department's Case

The Department called Guillermo Maldonado as its only witness.

Guillermo Maldonado, who is employed as a sales representative, testified that he currently resides at [REDACTED] the Bronx, and that he has lived there since 2007. Prior to moving to [REDACTED] he resided at [REDACTED] the Bronx, and prior to that he lived in Connecticut. In June, 2008, he was employed by [REDACTED] which is located in Stamford, Connecticut.

On June 18, 2008, between 0845 hours and 0900 hours, he left his apartment and exited [REDACTED] to begin his normal commute to work. He started walking toward the subway station for the D train, which is located at 170 Street and the Grand Concourse, intending to take the D train to Fordham Road and then walk from there to the Metro-North station to take the train to Stamford, Connecticut. As he got to the corner of College Avenue and crossed the street, he saw a black car with tinted windows [REDACTED].

As he walked by the car, he spotted a male driver and a female sitting in the front passenger seat. At that point he did not know that they were police officers. He kept walking and as he turned the corner, he heard the screeching of car tires and then heard a voice say, "Excuse me, good morning, good morning." He kept walking because he saw no one around him. When he again heard, "Excuse me," he turned to look behind him and saw the female who had been sitting in the black car with the tinted windows. He asked, "Are you speaking to me? Can I help you?" The female replied, "Can you please come here." He asked, "Who are you?" She replied that they were police officers, so he asked to see her ID. She showed him "a badge." The male officer then got out of the car and walked toward him. He asked him where he was headed to and he explained that he was walking to [REDACTED] and Grand Concourse to catch the D train to Fordham Road and then head to Connecticut.

The female officer was standing right in front of his right knee and the male officer was in front of his left knee about three to four feet away. There was no one else around. The male officer asked him if he was carrying any guns or a knife in his bag. When he responded that he was not, the male officer told him that he wanted to search his bag. He asked, "For what reason?" and then he stated, "No." The male officer then "patted down" his "front pocket." The male officer then asked him to open his bag. He stated, "No." The male officer stated, "You are being a dick," grabbed his left arm and handcuffed him. The male officer then took his bag, opened it, turned it upside down and let all of the contents of the bag fall to the sidewalk. - - - - - up, stuffed the items back into the bag, placed him and his bag into the rear seat of their car and transported him to the 44 Precinct, which was about a mile away.

He recalled that he had asked the officers three times, "What is the reason you are stopping me?" He denied that he had yelled or cursed at the officers. He was not placed into the officers' vehicle for five to ten minutes after he had been handcuffed.

At the 44 Precinct, the male officer asked him to produce an ID. This was the first time that the male officer had asked him for ID. He told him that his ID was in his back pocket inside his wallet. The male officer took his ID, which was a Connecticut State ID, and then told the female officer, "_____." The female officer escorted him into a cell with his bag. He had been inside the cell about for ten to 15 minutes, when the male officer opened the cell, let him out and handed him a summons. When he asked what the summons was for, the male officer said, "Discon." As he started walking out of the precinct, he asked the female officer for her "badge number." The male officer came over and he asked them, "Can I please have both of your badges and names?" Because "they refused" he "just left" the stationhouse and resumed his normal commute to Connecticut because he was already late for work.

That night, after work he went to his second job. After he got out of his second job, he arrived home just after midnight, showered, dressed and then went to the 44 Precinct. At the 44 Precinct, he asked to see the captain, but was told he was too busy so he asked to see a lieutenant. When he was told that the lieutenant was en route, he asked an officer who he should speak to in order to file a complaint against two officers assigned to the 44 Precinct. The officer - "the lobby" and told him to dial 311. He telephoned 311 and filed a complaint with the Civilian Complaint Review Board.

He went to court several times to answer the summons that he was issued. He refused to plead guilty. Because the male officer "never showed up," the summons was dismissed. He has not filed any lawsuit regarding this incident. Prior to the date of this incident, he had never filed a complaint against any police officer. Since this incident, "every time I walk down the street, every time I see an officer I have to be on the alert that I am going to get stopped. Basically, I think it's racial profiling. That's how I feel."

On cross-examination by Respondent Rivera's attorney, Maldonado agreed that the screech of tires he heard sounded like a car making sharp turn, and that the first words he heard the female officer utter were, "Excuse me, good morning," as she was getting out of the car. The first time she said "excuse me, good morning," he kept walking, but when she said it a second he stopped walking. She then asked him, "Can you please come here?" He responded, "Can I see some ID?" She showed him "a badge" as she was walking towards him. She stopped right in front of him. He never asked her if he could leave and he never tried to walk away. physical contact with him and she never said to him "stop right there" or "stop police."

On cross-examination by Respondent Weir's attorney, Maldonado agreed that he had just exited [REDACTED] when the officers approached him. Maldonado asserted that although it was a weekday at 0900 hours, there was no one on Grand Avenue at that time because it was summertime. He recalled that he was wearing a brown T-shirt and jeans. He had planned to arrive in Stamford, Connecticut by 1020 hours that morning, but he was running about ten minutes behind schedule. He agreed that he had "Connecticut identification" on his person that morning. When he was asked

if he "had any identification on him to show that he was a New York resident," he answered, "I had my light bill "

Maldonado agreed that the first thing the female officer said to him was "good morning sir," that he kept walking because he felt free to leave at that point in time, that he voluntarily chose to stop and engage her in conversation, and that the first question that she asked him was "where are you headed?" The male officer asked him the same question. He denied that he started to get upset with the officers because they were holding him up from getting to work and making him even later for work than he already was. He testified that he only wanted them to answer his question as to what was their reason for stopping him and that even though he asked them this question three times, he never got an answer. He asserted that because he was "being questioned by police officers," if he had walked away and "left on my own I would have been charged for interfering. I would have been chased down," so he did not attempt to walk away. He stayed and answered their questions because he believed that he did not have any other choice. He testified that he never raised his voice because he did not have a reason to even though he asked them three times why they were stopping him and did not get an answer, and even though they were making him more late for work than he already was.

He agreed that he was concerned that if he missed the next Metro-North train leaving the Fordham Road station that he would be an hour later for work than he already was that day. He asserted that he was not upset at the officers and that he did not curse at them. He had never had any other encounter with police prior to this incident or after this incident. He agreed that his date of birth is [REDACTED]. This was the only time that he has ever been questioned by New York City Police Officers. He testified that he

believed this was racial profiling because he was "a Spanish guy walking down the street with a bag at 9 30 in the morning " He recalled that the male officer came over to him and starting "pinching" his pants pocket with his fingers and did a "pat down" of his left pocket to see what was in his pocket He did not have anything in his left pocket The male officer did not put his hand in his pocket He asked the male officer what he was searching for, but he did not respond The male officer asked him if he was carrying a knife or guns in his bag He asked the male officer, "Why should I be carrying any guns and knife?" He denied that he was giving the officers a hard time He was patted down after he was already handcuffed Neither of the officers touched him with their hands before the male officer grabbed his arm and then placed handcuffs on him

The Respondents' Case

The Respondents testified in their own behalf

Respondent Weir

Respondent Weir testified when he and Respondent Rivera saw Maldonado exit [REDACTED], Maldonado did not look familiar to him as someone who lived at that location They followed him in their vehicle After they observed him walk northbound on [REDACTED] Avenue and then make a left turn and proceed westbound on 169 Street toward Grand Avenue, Respondent Weir pulled their vehicle over at the corner of 169 Street and Grand Avenue because they "just wanted to find out information and intell if in fact he resided at that location or if he had any other information for us about that location" and whether he might be willing to be a confidential informant When

Maldonado walked past their vehicle, they exited the vehicle and Respondent Rivera and stated twice, "Good morning sir, how you doing?" He stopped and he engaged in conversation with them. When Respondent Rivera asked him where he was coming from and where he lived, he stated that he lived in Connecticut and had "ID from Connecticut." He told them that he was late for work and that, "You guys are making me late for work. I work in Connecticut and I sometimes stay over here at [REDACTED] every once in a while."

Respondent Weir testified that Maldonado at this point was free to leave and "could have walked away at any time he wanted to." Maldonado started to become "very agitated" as Respondent Rivera "was asking him questions and he just went from like 0 to 10, just started cursing us out. I can't remember the exact words that he was saying but he was using foul language, obscene language that it got so bad that he was warned to watch his tone and watch himself. He was told to calm down and he just kept going on and on and on and on and on, which was drawing a crowd. It's 9 o'clock in the morning, there are people that are out on the street and they stopped and are looking, which he is trying to cause a scene now and everybody is looking at us like what is going on." He recalled that people were on 169 Street walking toward Grand Concourse and that they "were stopping by looking at us because they see us in plain clothes and they see this gentlemen screaming and yelling and is cursing using obscene language and gestures that I could not allow him to do that in public any more." He told him, "Listen, turn around, put your hands behind your back. You're being arrested for disorderly conduct." Respondent Weir was asked how much time elapsed from when he first approached

Maldonado until he made the decision to arrest him. He answered, "The situation escalated so fast that it wasn't even, it was a couple minutes. I didn't get a chance to even ask him any other questions or anything he just escalated the situation so fast that it

He placed Maldonado in handcuffs and asked him if he had any weapons or knives on his person. He stated no physical contact with Maldonado and he never told Maldonado that he was not free to leave the area. He decided to place him in handcuffs and remove him from the scene "because he was being disorderly in public, causing annoyance to myself, to my partner, and to other people that were around as on lookers as to what he was doing. I couldn't allow him to do that." He patted down Maldonado and pinched the outside of his pants after he was placed under arrest and before they placed him into their vehicle to transport him to the 44 Precinct. Upon arriving there, Maldonado "was asked for pedigree information, which he gives us his name, his address and which he first he gives us his address as Connecticut, but for the C summons I put down [REDACTED]"

Maldonado never provided any ID or other proof that he actually lived at [REDACTED]
[REDACTED]

When Respondent Weir was asked whether he had considered adding any other charges against Maldonado, he answered, "I could have [REDACTED] with trespass and he would have went through the system at Central Booking but I didn't feel that was necessary because the only reason he was there was because he was disorderly in public in the street and I wasn't looking to lock him up. I was just there to gather information, to find out information from him, so that's the reason why he was just issued a C summons."

After Respondent Weir performed a warrant check to make sure that Maldonado did not have any outstanding warrants, he was released Maldonado apologized to him He never received any notification to appear and testify in the Bronx Criminal Court regarding the Disorderly Conduct summons that he had issued

On cross-examination, Respondent Weir confirmed that while he was observing Maldonado as he was walking westbound on 169 Street to the corner of Grand Avenue, he did not see him speak to anyone and there was nothing suspicious about his behavior

Respondent Weir asserted that he could have arrested Maldonado for trespassing based on Maldonado's statements at the stationhouse that he only stayed in the building sometimes but that he lived in Connecticut and worked in Connecticut Respondent Weir testified that "most times not necessarily him but other people use other people's addresses to say that they know somebody in the location as a way to get out of the charge " Respondent Weir testified that before they arrived at the stationhouse, he did not have enough information to arrest Maldonado for trespassing because "I never got to that level of testimony from him, not until later on At that point on the street, he didn't give me a chance to even explain anything to him " When Respondent Weir was specifically asked whether he had enough information to arrest Maldonado for trespassing while they were interacting on the street, he answered, "But just the mere fact that he was approached and asked questions he didn't give us a chance to explain anything to him because of his demeanor " Respondent Weir testified that although he issued him "a C summons" for Disorderly Conduct, he "could have arrested Mr Maldonado for trespassing but it wasn't -- what I am trying to say is I wasn't upset with Mr Maldonado If I was upset with Mr Maldonado or anything, I am not trying to say

that I was retaliating against him, but he could have been arrested for trespassing at that point in time once he was in the stationhouse with the information that he told me but I was not looking to arrest Mr Maldonado I was there merely looking to ask him information to gather intelligence from him from coming out of that location "

Respondent Weir testified that Maldonado was screaming and cursing at him and Rivera although he could not recall "the exact words that he was saying, but he was using obscene language and cursing in public " Respondent Weir confirmed that Maldonado was arrested was very quickly after he began screaming and cursing Respondent Weir confirmed this was offensive to him and his partner and "people walking by with their children" that morning He estimated that "more than four people on the street" had "stopped to look and stare at us while we were encountering Mr Maldonado " When he was asked if any of these people had made any comments to him or Rivera, he recalled that "They were just standing there and watching " When he was asked if any of these people had indicated that that they were upset or alarmed by Maldonado, he answered, "Well, I was alarmed and I wanted to get him off the street before it went any further "

He denied that he had asked Maldonado any questions about the bag he was carrying He confirmed that when he placed Maldonado into the car, his bag was placed right next to him He did not search the bag because there was "no need to search his bag" because Maldonado was in handcuffs and Rivera was also in the back seat He confirmed that when he and Rivera approached Maldonado, he could have just walked away at any time during the questioning and that one of the questions they had asked him was where was he coming from He could not recall what Maldonado's response was to

this question and he could not recall any of the conversation between Maldonado and Rivera. He explained that because Maldonado "didn't even let us finish questioning him the only part that he stated to us is that he lives in Connecticut, he works in Connecticut, he's late for work and he stayed sometimes in [REDACTED]. We didn't get any further than that when he became enraged. He was belligerent so I couldn't even finish asking him any other type of other questions."

He testified that it "was a mistake on my part" not to have entered on the summons the subsection of Disorderly Conduct that Maldonado was being charged with [Department's Exhibit (DX) 1]. He testified that he entered [REDACTED], the Bronx, on the summons as being Maldonado's residence address because even though Maldonado "had no identification to produce that he lived at [REDACTED], he says I stay there once in a while" so he wrote [REDACTED] on the summons because if he had entered Maldonado's "Connecticut ID I would have to put him through the system which I did not want to put him through the system so I put his Bronx address down." He testified that because he was issuing Maldonado a C summons, he had to place him under arrest and bring him to the stationhouse to perform a warrant check to insure that he did not have any outstanding warrants.

Respondent Rivera

Respondent Rivera, who is temporarily assigned to Patrol Service Area (PSA) 6 and is currently on restricted duty due to pregnancy, recalled that after Respondent Weir stopped their vehicle on 169 Street and Grand Avenue, she exited the vehicle and said, "Good morning, sir," to Maldonado who was walking on the sidewalk. When he kept

walking, she said "good morning" again and then he stopped. When she approached him he asked, "who are you?" She told him, "I'm police." When he asked her for ID, she took her shield out. He asked her, "How can I help you?" She responded, "Hi, where were you coming from, what building did you just come from?" He appeared upset and agitated and told her in a raised voice, "I'm fucking late for work. I woke up fucking late. I am going to miss my fucking train to Connecticut" or "something like that." She told him, "All I need to know is where you just came from, what apartment and what floor, that's it and then you will be on your way" or "something like that," because she wanted to know if he had been trespassing in the building he had left. He told her that he stayed at [REDACTED] [REDACTED] and he also stated that he worked and lived in Connecticut. She recalled that he "was unable to give me a floor at that time" and then he stated "I stay with [REDACTED]" or words to that effect. He then " [REDACTED] very belligerent, irate, yelling, he continued to curse and he was using obscene language." People walking by stopped and were looking at what was going on. She saw a few people walking on the street. Both she and Respondent Weir told Maldonado to lower his voice or to just calm down but he became "very nasty and then he was placed under arrest for Disorderly Conduct."

Respondent Weir handcuffed him and she told him to bring his backpack on his shoulder, down and put it by his side. She testified that "I think I took the bag from there." Weir told him to turn around and put his hands behind his back and handcuffed him. He was then transported to the 44 Precinct. At the 44 Precinct, Respondent Weir conducted a warrant check on Maldonado.

On cross-examination, Respondent Rivera agreed that Maldonado never told them that they were bothering him, that he willingly engaged in a conversation with them, and that he continued to remain standing on the sidewalk engaging in conversation with them. When Respondent Rivera asked Maldonado about [REDACTED], "he was unable to give the apartment at that time." Later, at the 44 Precinct, Maldonado stated that he lived in apartment [REDACTED].

Respondent Rivera agreed that even after Maldonado began to yell and scream and curse on the street, he could still have walked away from the officers and that although there were a few people in the area at the time, none of these people motioned to her or said anything to her about what was going on although their facial expressions indicated that "they were surprised, intrigued at what he was saying or what was going on." When Respondent Rivera was asked if the decision to arrest Maldonado for Disorderly Conduct was Weir's alone, she answered that "it was a mutual decision" and that she concurred one hundred percent with Weir's judgment that there was probable cause to arrest Maldonado for Disorderly Conduct.

FINDINGS AND ANALYSIS

The Respondents are jointly charged with abusing their authority by stopping Maldonado without sufficient legal authority and Respondent Weir is also charged with abusing his authority by [REDACTED] Conduct to Maldonado without sufficient legal authority.

It is not disputed that the Respondents were the police officers who approached Maldonado on the street after he came out of [REDACTED] at about 0900 hours, on June 18, 2008. With regard to the charges that the Respondents abused their authority

by stopping Maldonado on the street without sufficient legal authority, I find the Respondents Guilty

It is not disputed that the Respondents' purpose in approaching Maldonado was to determine if he had been trespassing inside [REDACTED], a building which was enrolled in TAP. The record is devoid of any evidence which refutes Maldonado's testimony that he had been a tenant at [REDACTED] since 2007. However, even if I credit Respondent Weir's claim that when he saw Maldonado coming out of the building he suspected that he might not be a tenant because he did not recognize him, the Respondents had the legal right to do no more than approach Maldonado and conduct a common law inquiry as to whether he was a tenant or the guest of a tenant.

To insure that uniformed members of the Department handle TAP-related citizen encounters in a lawful manner, the Department's Legal Bureau has prepared a TAP guidebook to provide legal guidance. This TAP guidebook cautions that, "It should be understood that when an officer is not in the building (e.g. sitting across the street in an RMP), merely observing an individual entering and exiting the building, or simply exiting the building, is not enough to conduct a stop."¹

I find that the Respondents did stop Maldonado because I credit Maldonado's

Respondent Weir asked him if he was carrying any weapons in his bag and that he responded that he was not, Respondent Weir told him that he wanted to search his bag, that he told Respondent Weir, "No," that Respondent Weir then patted his "front pocket" and asked him to open his bag, that when he again stated, "No," Respondent Weir told him that he was "being a dick," that Respondent Weir then

¹ Trespass Affidavit Program. Legal Guidelines for Citizen Encounters in Trespass Affidavit Buildings, Legal Bureau (Jan. 1999) p. 6

grabbed his left arm and handcuffed him, took his bag, opened it, turned it upside down and dumped the contents on the sidewalk

The believability of Maldonado's testimony regarding what Respondent Weir said and did is enhanced by the fact that Maldonado did not allege that Respondent Rivera said or did anything improper. On the contrary, Maldonado corroborated Respondent Rivera's testimony that she was officer who spoke to him first, that she never ordered him to stop walking, that she called to him with the courteous greeting, "Excuse me, good morning, sir," that after he requested to see her ID she immediately displayed her Department shield to him, . . .

touched him until after Respondent Weir had grabbed his arm and handcuffed him

Maldonado's . . . because he corroborated the Respondents' claims that when they approached him they . . . : did not surround him or otherwise attempt to limit his physical mobility by obstructing his ability to walk away from them, that he never attempted to walk away from the officers, and that he never asked them if he could leave. If Maldonado was inventing a false scenario to create trouble for these officers, it is unlikely that he would have testified in such a candid manner.

Thus, although the Respondents' initial, purely verbal, street interaction with Maldonado was proper, Respondent Weir's action of putting his hand on Maldonado and searching the bag he was carrying constituted an improper forcible stop of Maldonado.

As a result, each Respondent is found Guilty of Specification No. 1 as charged under their respective Disciplinary Case numbers.

With regard to the charge that Respondent Weir abused his authority by issuing a summons for Disorderly Conduct to Maldonado without sufficient legal authority, I find Respondent Weir Guilty based on his own testimony in which he did not articulate a — why he arrested and issued a summons for Disorderly Conduct to Maldonado

The believability of Respondent Weir's and Respondent Rivera's testimony that Maldonado had exclaimed multiple curses and uttered extensive obscene language must be examined in light of the fact that Respondent Weir could not recall any of the specific curses or obscenities Maldonado had supposedly uttered, and the only curse Respondent Rivera cited in her testimony was that Maldonado had used the word "fuck" as an adjective when he told them, "I'm fucking late for work I woke up fucking late I am going to miss my fucking train " Also, Respondent Weir acknowledged that Maldonado had been acting up for only "a couple of minutes" before Respondent Weir "very quickly" decided to arrest him for Disorderly Conduct

Respondent Weir was confronted on cross-examination with the fact that one of the elements of Disorderly Conduct is that the person act with intent to cause public inconvenience, annoyance or alarm, or recklessly create a risk that public inconvenience, annoyance or alarm will occur Although Respondent Weir asserted that Maldonado had caused annoyance to more than four onlookers, he admitted that these onlookers "were just standing there and watching," and when he was asked if any of these onlookers had indicated to him that they were upset or alarmed by Maldonado, he answered, "Well, I was alarmed and I wanted to get him off the street before it went any further "

I find that Respondent Weir's apparent lack of understanding of the "public inconvenience" element of the offense of Disorderly Conduct was further reflected in his testimony that he had arrested Maldonado for Disorderly Conduct in part because Maldonado had "caused annoyance to me and my partner "

Also, although Respondent Weir asserted that his failure to enter the subdivision of Penal Law section 240 20 that Maldonado had violated on the C summons he issued to Maldonado constituted merely a "mistake," this failure leads to the suspicion that the real reason that Respondent Weir arrested Maldonado for Disorderly Conduct was because he wanted to perform a warrant check on him at the stationhouse

All of Respondent Weir's testimony must be examined in light of his assertion that at the stationhouse he could have properly charged Maldonado with having committed the crime of Trespass based on Maldonado's statements to him at the stationhouse that he stayed at [REDACTED] sometimes but that he lived in Connecticut and worked in Connecticut As the TAP guidebook cautions, "It should be remembered that mere proof that an individual is not a tenant is insufficient to show that the individual was not an invited guest "² In this regard, I find it significant that, contrary to Respondent Weir's testimony, Respondent Rivera specifically recalled that Maldonado had told her that he stayed with "[REDACTED]" and that he lived in apartment [REDACTED] at [REDACTED]

Finally, Respondent Weir's claim that he could have charged Maldonado for trespassing inside [REDACTED] is inconsistent with his admitted action of

² Trespass Affidavit Program Legal Guidelines for Citizen Encounters in Trespass Affidavit Buildings, Legal Bureau (Jan. 1999), Procedural Issues, No 3, p 10

writing on the C summons for Disorderly Conduct he issued to Maldonado that Maldonado's residence address was "[REDACTED]"

The Respondents are found guilty as charged

PENALTY

In order to determine appropriate penalties, the Respondents' service records were examined See *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

Respondent Weir was appointed on August 30, 1993 Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

Respondent Rivera was appointed on July 1, 2003 Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

Respondent Weir and Respondent Rivera have been found guilty of abusing their authority by forcibly stopping Maldonado without sufficient legal authority Respondent Weir has also been found guilty of abusing his authority when he issued a summons for Disorderly Conduct to Maldonado without sufficient legal authority

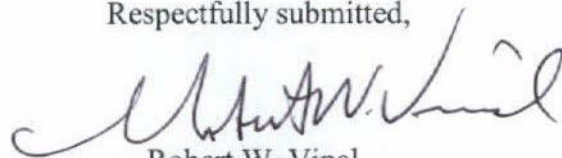
The Assistant Department Advocate recommended that Respondent Weir be required to forfeit 15 vacation days as a penalty and that Respondent Rivera be required to forfeit ten vacation days as a penalty

In formulating penalty recommendations regarding the Respondents' misconduct of improperly stopping Maldonado, I have taken into consideration the fact that Respondent Weir was the senior officer and, more significantly, that he was the officer

who initiated physical contact with Maldonado. I have also taken into consideration Respondent Weir's prior formal disciplinary record and Respondent Rivera's lack of a formal disciplinary record (See attached Confidential Memoranda).

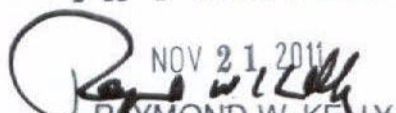
It is recommended that Respondent Weir forfeit 20 vacation days. It is recommended that Respondent Rivera forfeit five vacation days.

Respectfully submitted,



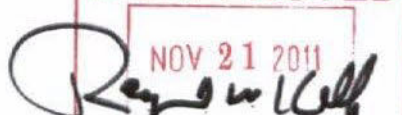
Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED



NOV 21 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

DISAPPROVED



NOV 21 2011
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER DETECTIVE GEORGE WEIR
TAX REGISTRY NO 944206
DISCIPLINARY CASE NO 85932/09

The Respondent received an overall rating of 5.0 on his 2010 performance evaluation, 5.0 on his 2009 evaluation, and 4.5 on his 2008 evaluation. He has no medals. He has never been designated Chronic Sick.

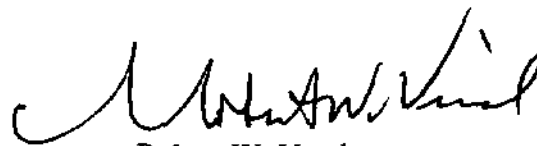
He has an extensive formal disciplinary record. In 1998, he forfeited 20 vacation days after he pleaded guilty to two disciplinary cases in which he was charged with using excessive force against civilians on two separate occasions during 1997.

In 1999, he forfeited 30 vacation days and was placed on one year dismissal probation after he pleaded guilty to engaging in off duty employment as a security guard without permission. His one year period on dismissal probation ended in July, 2001.

In 2001, he forfeited ten vacation days after he pleaded guilty to having impeded an official Department investigation by failing to provide relevant information to Department investigators.

On January 27, 2009, he was placed in Level-I Force Monitoring because he had received three or more CCRB complaints during the previous year.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials

To Police Commissioner

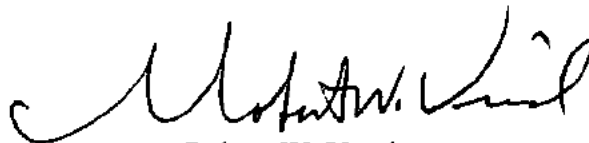
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER JEANNETTE RIVERA
TAX REGISTRY NO 933259
DISCIPLINARY CASE NO 85933/09

The Respondent received an overall rating of 3.0 on her 2010 performance evaluation, 4.0 on her 2009 evaluation, and 3.0 on her 2008 evaluation. She has no medals [REDACTED] She has no prior formal disciplinary record.

On August 3, 2007, she was placed in Level-I Force Monitoring because she had received three or more CCRB complaints in one year.

On August 28, 2009, she was placed in Level-II Force Monitoring because she had received three or more CCRB complaints during one year.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner – Trials